

APPEAL NO. 142443
FILED DECEMBER 22, 2014

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 16, 2014, in Fort Worth, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of [Date of Injury], does not extend to right knee Grade III chondromalacia in the medial femoral condyle and patella. The appellant (claimant) appealed, disputing the hearing officer's determination of the extent of the compensable injury. The claimant contends that the hearing officer changed the extent-of-injury issue without her agreement and that the determination of the hearing officer does not correlate to the issue as amended. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury determination. We note the hearing officer's decision states an incorrect address for the carrier's registered agent for service of process.

DECISION

Reversed and remanded.

The parties stipulated that on [Date of Injury], the claimant sustained a compensable injury. The claimant testified that on the date of the compensable injury she was working in the file room. She was kneeling to get a file out of the cabinet, and her knee slipped into the groove of the track for the filing cabinet and got stuck. In evidence is an operative report dated June 30, 1992, that reflects the claimant had surgery on her right knee and notes the post-operative diagnosis as Grade III chondromalacia of the medial femoral condyle and patella. The operation performed on that date is described as a chondroplasty of the medial femoral condyle and patella. The claimant had another surgery on her right knee on March 9, 2012. The post-operative diagnoses included Grade II chondral damage and noted extensive Grade IV chondral damage in the medial compartment and Grade III chondral damage in the patellofemoral compartment.

The issue stated in the Benefit Review Conference (BRC) Report is: "Does the [[Date of Injury]], compensable injury extend to and include right knee Grade III chondromalacia in the medial femoral condyle and patella?" There is no evidence that either party filed a written response to the BRC report. The parties discussed amending the issue to: Does the compensable injury of [Date of Injury], extend to right knee Grade III chondromalacia in the medial femoral condyle and patella after the June 30,

1992, surgery? The claimant requested a continuance if the issue was going to be changed. The carrier was agreeable to the change. On the record the hearing officer stated that they would “save the amendment” of the issue until after the testimony of (Dr. G) was presented by the carrier. Both the claimant and Dr. G testified and the parties presented their closing argument. There was no further discussion on the record regarding amending the issue.

In the “Statement of the Case” portion of the decision and order, the hearing officer stated the issue was amended for good cause and by agreement of the parties to the following: “Does the compensable injury of [Date of Injury], extend to right knee Grade III chondromalacia in the medial femoral condyle and patella after the June 30, 1992, knee surgery? (As amended for good cause and by agreement of the parties.)” The claimant in her appeal disagrees that there was an agreement by the parties to amend the issue. Although a review of the record reflects the parties discussed amending the issue, the parties did not agree to change the issue on the record nor did the hearing officer definitively state that the issue would be amended prior to closing the record.

The hearing officer determined the issue based on the original issue stated in the BRC report although he stated that in his decision that the issue had been amended. The hearing officer’s determination does not correspond with the issue the hearing officer identified in his decision and order. Accordingly, we reverse the hearing officer’s determination that the compensable injury of [Date of Injury], does not extend to right knee Grade III chondromalacia in the medial femoral condyle and patella and remand the extent-of-injury issue to the hearing officer.

REMAND INSTRUCTIONS

On remand the hearing officer is to clarify the specific extent-of-injury at issue in the CCH. The hearing officer is to give notice to both parties the specific wording of the extent-of-injury issue to be decided. The parties are to be given an opportunity to respond and present evidence based on the specific extent-of-injury issue to be decided. The hearing officer is then to make a determination of the specific extent-of-injury issue to be decided based on the evidence. Additionally, on remand the hearing officer is also to correct the address of the registered agent for service of the carrier.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers’

Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge